

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 7, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2011AP1810

Cir. Ct. No. 2011CV10608

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN EX REL. HOWARD A. PERKINS,

PETITIONER-APPELLANT,

V.

STATE OF WISCONSIN,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
WILLIAM W. BRASH, III, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Howard A. Perkins, *pro se*, appeals an order denying his petition for writ of *habeas corpus*. He argues: (1) that his guilty plea was involuntarily entered because he did not understand what it meant to be convicted as a party to a crime; (2) that Michael Steinle, his trial lawyer,

ineffectively represented him because Steinle did not tell him that he could receive consecutive sentences; (3) that his juvenile record was unlawfully introduced at sentencing; (4) that the police should not have showed his picture to people in the neighborhood; and (5) that his postconviction/appellate lawyer ineffectively represented him by failing to raise these issues either by postconviction motion or on direct appeal. We affirm.

¶2 Perkins was convicted in 2006 of second-degree reckless homicide while armed, as a party to a crime, and felon in possession of a firearm. Perkins moved to withdraw his plea after sentencing on the grounds that he did not understand the nature of party-to-a-crime liability. After an extensive hearing, the circuit court denied the motion. Perkins raised the argument again on direct appeal. We affirmed the judgment of conviction. Perkins then brought this *pro se* petition for writ of *habeas corpus*, alleging that the lawyers appointed to assist him with postconviction and appellate proceedings ineffectively represented him by failing to raise all of the arguments listed above.¹ The circuit court dismissed the petition without a hearing.

¶3 The “[w]rit of *habeas corpus* is an equitable remedy that protects a person’s right to personal liberty by freeing him or her from illegal confinement.” *State v. Pozo*, 2002 WI App 279, ¶8, 258 Wis. 2d 796, 654 N.W.2d 12. Our review of a circuit court’s order denying a petition for writ of *habeas corpus*

¹ The State contends that Perkins should have initially filed his petition for writ of *habeas corpus* in this court, not the circuit court, because Perkins contends that his appellate lawyer failed to present meritorious issues on direct appeal. See *State v. Knight*, 168 Wis. 2d 509, 520, 484 N.W.2d 540 (1992). Where, as here, a defendant alleges that postconviction counsel was ineffective for failing to preserve issues by filing a postconviction motion, however, the defendant must file a petition for writ of *habeas corpus* in the circuit court. See *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 679, 556 N.W.2d 136 (Ct. App. 1996).

presents a mixed question of fact and law. *Id.*, 258 Wis. 2d 776, ¶6. We will uphold the circuit court’s findings of fact unless they are clearly erroneous. *Id.* Whether the writ is available to the defendant seeking relief is a question of law that we review *de novo*. *Id.* “[I]n a postconviction setting, a petition for writ of *habeas corpus* will not be granted where ... the petitioner asserts a claim that he or she could have raised during a prior appeal, but failed to do so, and offers no valid reasons to excuse [the] failure.” *Id.* (citation omitted).

¶4 Perkins first argues that his plea was not voluntarily entered because he did not understand what it meant to be charged as a party to a crime. Perkins’ appointed appellate counsel raised this issue on direct appeal. “A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.” *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). We will not consider this issue.

¶5 As for the remainder of Perkins’ claims, he should have raised them on direct appeal or should have presented a sufficient reason for failing to previously raise them. *See Pozo*, 258 Wis. 2d 796, ¶9. Perkins contends that he did not previously raise the arguments because the postconviction and appellate lawyers who represented him did not properly do their jobs. Perkins’ bald assertion that his lawyers’ alleged ineffectiveness provides sufficient reason for failing to previously raise these issues is not, by itself, enough. *See State v. Balliette*, 2011 WI 79, ¶65, 336 Wis. 2d 358, 805 N.W.2d 334. Perkins is required to explain “*why* it was deficient performance” for his lawyers not to raise these issues. *See id.* (emphasis in the original). Stated differently, Perkins needed to show why his lawyers’ failure to raise the issues “fell below an objective standard of reasonableness” and “overcome the presumption that, under the circumstances,

the challenged action ‘might be considered sound ... strategy.’” *See id.*, 336 Wis. 2d 358, ¶67 (citation and quotation marks omitted, ellipsis in original). Because Perkins has presented only a vague assertion in support of his claim that the lawyers who represented him during postconviction and appellate proceedings rendered ineffective assistance, without providing any legal reasoning that suggests his attorneys’ actions were not part of a sound strategy or otherwise reasonable, he has not met his burden of showing that he had a sufficient reason for failing to previously raise the issues. Therefore, we affirm the circuit court’s order dismissing Perkins’ petition for writ of *habeas corpus*.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

